IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9564 OF 2003.

Smt. Subhadrabai G./Patki
since deceased through her L.Rs.
Shri Dnyaneshwar Govind Patki ... Petitioner.
V/s.
M/s Ramchandra S. Tatiya & ors... Respondents.

Ms. Latika Panchakshari for the petitioner.

CORAM: R.C.CHAVAN,J

DATED: 11th January 2007.

P.C.:

. By this petition, petitioner takes exception to the order passed by the Civil Judge, SD, Pune, rejecting petitioner's application for condonation of delay of 5 years in bringing legal representatives of the deceased plaintiff. According to the learned Counsel for the petitioner, the original plaintiff died on 7.8.1995. Petitioner was contacting his advocate on telephone and used to take further dates in the proceedings. Only after 5 years, it dawnedn the petitioner that he is required to implead himself as the plaintiff in the place of his deceased mother. Therefore, an application was filed only in 2000 i.e. after 5 years after death of his mother. The application was opposed by the respondent. The learned trial Judge rejected the

application holding that delay was not condonable.

2. Learned Counsel for the petitioner does not dispute that the petitioner had knowledge of the death of the original plaintiff as also pendency of lis since petitioner is claiming to have contacted advocate for taking dates in the proceeding. Ignorance of the petitioner, that he did not know that he was required to move an application for joining himself as the plaintiff in place of deceased plaintiff cannot be an excuse since the petitioner should have known that after death of the sole plaintiff he was required to bring himself on record and prosecute the suit further. Apart from law, it is a matter of common sense. In view of this, the learned Judge cannot be said to have erred in rejecting the application for condonation of delay. Petition is devoid of merit and the same is, therefore, dismissed.

(R.C.CHAVAN,J.)